

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
GINA MARIE ROSADO,

Plaintiff,

-against-

MILES DANIEL JOHNSON and  
BAKER INSTALLATIONS, INC.,

Defendants.  
-----X

MILES DANIEL JOHNSON and  
BAKER INSTALLATIONS, INC.,

Third Party Plaintiffs,

- against -

EDWARD ROSADO,

Third Party Defendant.  
-----X

JASON M. BERNHEIMER, an attorney duly admitted to practice law in the Courts of the State of New York and in the Southern District of New York, affirms the truth of the following under the penalties of perjury:

1. That I am associated with the law firm of NESCI - KEANE, PLLC attorneys for the defendants/third-party plaintiffs, herein. As such I am fully familiar with the facts and circumstances of the within action based upon a review of the file maintained in this office.

2. That I submit this Affirmation in opposition to the motion by plaintiff seeking an Order pursuant to 28 USC §1447 to remand this action to the Supreme Court of the State of New

York, County of Bronx. The plaintiff failed to establish any viable basis for remanding this action to state court. Accordingly, the motion should be denied in its entirety.

3. This action seeks money damages for the personal injuries allegedly sustained by the plaintiff in an alleged motor vehicle accident that occurred on November 19, 2007 in Bronx County, New York. The plaintiff was a passenger in the vehicle operated by her husband the third-party defendant, EDWARD ROSADO. According to the Police Accident Report, the alleged accident occurred when the vehicle operated by defendant/third-party plaintiff, MILES JOHNSON, and owned by defendant/third-party defendant, BAKER INSTALLATIONS, INC., was attempting to make a right turn and it was struck by the ROSADO vehicle as ROSADO attempted to pass on the right in the bicycle lane. Copies of the Police Accident Report and Amended Police Accident Report are annexed hereto as Exhibit "A".

4. The instant action was commenced with the filing of a Summons & Complaint in the Supreme Court of the State of New York, County of Bronx on or about February 25, 2008. A copy of the Summons & Complaint were attached as Exhibit "A" to plaintiff's motion. In that action, the plaintiff named as party defendants, the two defendants named herein and also EDWARD ROSADO. Plaintiff's counsel apparently learned that ROSADO'S insurance policy did not provide coverage for spousal liability and therefore the carrier refused to provide a defense or indemnification to ROSADO in the action instituted by his wife.

5. As a result of ROSADO'S insurance company refusing to provide coverage to him in the action, plaintiff voluntarily discontinued the action as against him. As set forth in plaintiff's motion, this office agreed to institute a third-party action as against ROSADO, after the main action

was discontinued against him. It should be noted that considering what appears to be certain comparative fault on the part of ROSADO, had he remained a defendant in the action, cross-claims against him would have been interposed.

6. After plaintiff discontinued the action against her husband, it was determined that this Court's diversity jurisdiction was created. Accordingly a removal petition was filed promptly filed after receipt of the discontinuance against ROSADO. Shortly after filing the removal petition, a third-party action was commenced as against EDWARD ROSADO in this Court.

7. An Answer to the third-party complaint was filed on August 21, 2008.

8. As set forth in the removal petition, complete diversity of citizenship exists between the plaintiff and the defendants. It is undisputed that the plaintiff is a resident of the State of New York. It is also undisputed, as set forth in the police accident report, that defendant, MILES JOHNSON, is a resident of the State of Minnesota and that defendant, BAKER INSTALLATIONS, INC., is a resident of the Commonwealth of the Pennsylvania with a principal place of business in Pennsylvania. Annexed as Exhibit "B" is a printout from the Pennsylvania Department of State.

9. Significantly, plaintiff does not dispute the fact that removal of the action was proper and that this Court has subject-matter jurisdiction based on diversity of citizenship.

10. The instant motion practice ensued by plaintiff in an effort to now claim that discontinuing the original action against her husband was a mistake and trying to remand the action to state court. Plaintiff's actions are a clear attempt at forum shopping to get the action back in to Bronx County, New York, which is known to be the most liberal venue in the state.

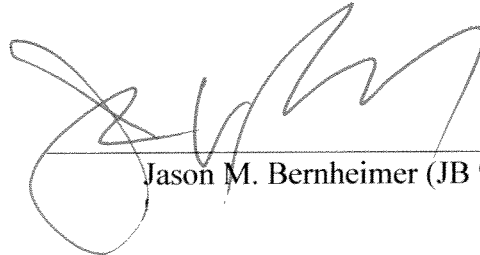
11. Plaintiff's actions in commencing a new separate action against her husband with the idea to consolidate the two actions is nothing more than a calculated effort to destroy diversity of citizenship. There is no question that the plaintiff cannot recover any sum of money from her husband in this action. His insurance company refused to provide a defense or indemnification because his insurance policy did not contain spousal liability coverage.

12. The only reason proffered by plaintiff for the sudden urge to recommence an action against her husband is in the event they get divorced during the pendency of this action she can somehow recover money from him. However, what it appears plaintiff fails to realize is if they get divorced, there is still no insurance coverage for a direct claim against ROSADO because it was the coverage in effect on the day of the accident that controls. In addition, plaintiff's claim that if she gets divorced she will somehow be able to magically recover damages is speculative at best.

13. Thus the Court should plainly see that plaintiff's motion is nothing more than an attempt at forum shopping to get the case out of this Court and back into the ultra-liberal state court in Bronx County. Therefore, the motion should be denied in its entirety.

WHEREFORE it is respectfully requested that the Court issue an Order pursuant to 28 USC §1447 denying plaintiff's motion in its entirety, together with such other and further relief as this Court may deem just and proper.

Dated: Hawthorne, New York  
August 26, 2008

A handwritten signature in black ink, appearing to read 'Jason M. Bernheimer', is written over a horizontal line.

Jason M. Bernheimer (JB 9566)

Exhibit “A”



CRIMINAL REPORT

Accident Date Month 11 Day 19 Year 07		Day of Week Tues	Military Time 1533	No. of Vehicles 2	No. Injured 0	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input type="checkbox"/> No		
VEHICLE 1				VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN							
VEHICLE 1 - Driver License ID Number 8386199581817				State of Lic. MN		VEHICLE 2 - Driver License ID Number 595 556 175				State of Lic. NY	
Driver Name - exactly as printed on license Mikes Daniel Johnson				Apt. No.		Driver Name - exactly as printed on license Rosado, Edward Jr.				Apt. No.	
Address (Include Number & Street) 13154 295th St				City or Town Lindstrom		State MN		Zip Code 55045		Address (Include Number & Street) 2501 Morris Ave	
City or Town Lindstrom				State MN		Zip Code 55045		City or Town Bronx		State NY	
Date of Birth 06/14/88				Sex M		Unlicensed <input type="checkbox"/>		No. of Occupants 2		Public Property Damaged <input type="checkbox"/>	
Name - exactly as printed on registration Baker Installation Inc				Sex		Date of Birth		Name - exactly as printed on registration Rosado, Gina M		Sex F	
Address (Include Number & Street) 4121 Washington Rd				Apt. No.		Haz. Mat. Code		Address (Include Number & Street) 2501 Morris Ave		Apt. No. 2F	
City or Town Mc Murray				State PA		Zip Code 15317		City or Town Bronx		State NY	
Plate Number TH57152				State of Reg. PA		Vehicle Year & Make 2000 Bld TR		Plate Number BMV4144		State of Reg. NY	
Ticket/Arrest Number(s)				Violation Section(s)		Ticket/Arrest Number(s)		Violation Section(s)		Vehicle Year & Make 1993 Toyota 4DSD	
Violation Section(s)				Violation Section(s)		Violation Section(s)		Violation Section(s)		Ins. Code 234	

Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.		Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.		Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.			
VEHICLE 1 DAMAGE CODES		VEHICLE 2 DAMAGE CODES		Diagram showing accident scene with vehicles 1, 2, and 3. Vehicle 1 is a truck, Vehicle 2 is a car, and Vehicle 3 is a car. The diagram shows Vehicle 1 turning right into the path of Vehicle 2, which was attempting to pass Vehicle 1. Vehicle 3 was also involved in the accident.			
Box 1 - Point of Impact Box 2 - Most Damage		Box 1 - Point of Impact Box 2 - Most Damage		Cost of repairs to any one vehicle will be more than \$1000. <input checked="" type="checkbox"/> Unknown/Unable to Determine <input type="checkbox"/> Yes <input type="checkbox"/> No			
more Damage Codes		more Damage Codes					
Vehicle By Towed To		Vehicle By Towed To					
VEHICLE DAMAGE CODING: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 15. TRAILER 16. OVERTURNED		VEHICLE DAMAGE CODING: 17. DEMOLISHED 18. NO DAMAGE 19. OTHER					

Reference Marker	Coordinates (if available) Latitude/Northing: Longitude/Easting:	Place Where Accident Occurred: <input checked="" type="checkbox"/> BRONX <input type="checkbox"/> KINGS <input type="checkbox"/> NEW YORK <input type="checkbox"/> QUEENS <input type="checkbox"/> RICHMOND
		Road on which accident occurred: Prospect Ave (Route Number or Street Name)
		at 1) intersecting street Jennings St. (Route Number or Street Name)
		or 2) <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W of (Milepost, Nearest Intersecting Route Number or Street Name)

Accident Description/Officer's Notes: NY Traffic driver of veh #1 states he was driving n/p on prospect ave attempting to make a right turn on Jennings Ave when driver of veh #2 attempted to pass veh #1 on the right lane in the bicycley only lanes causing him to collide with veh #2. Driver of veh #2 stated didn't see the indicator of veh #1 and attempted to pass veh #1 on the right.

	8	9	10	11	12	13	14	15	16	17	18	BY	TO	Names of all involved	Date of Death Only
A	1	1	4		21	M	X	13	6	-	-	-	-	Mikes Daniel Johnson	
B	1	3	4		23	M	X	13	6	-	-	-	-	Barbays III, Narm	
C	2	1	4		37	M	X	13	6	-	-	-	-	Rosado, Edward Jr	
D	2	3	4		37	F	X	13	6	-	-	-	-	Rosado, Gina	
E															
F															

Officer's Rank and Signature: PO Rosado	Tax ID No. 070122	NCIC No. 0000	Precinct 1110	Post/Sector	Reviewing Officer	Date/Time Reviewed
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Last Name

Date of Birth Month Day Year			Telephone (Area Code)			Date of Birth Month Day Year			Telephone (Area Code)								
Last Name			First			M.I.			E Last Name			First			M.I.		
Address						Address											
Date of Birth Month Day Year			Telephone (Area Code)			Date of Birth Month Day Year			Telephone (Area Code)								
Last Name			First			M.I.			Highway Dist. at Scene? <input type="checkbox"/> Yes <input type="checkbox"/> No			Name:					
Address						Shield No.											
Date of Birth Month Day Year			Telephone (Area Code)			Date of Birth Month Day Year			Telephone (Area Code)								
Last Name			First			M.I.			Highway Dist. at Scene? <input type="checkbox"/> Yes <input type="checkbox"/> No			Name:					
Address						Shield No.											

ENTER INSURANCE POLICY NUMBER FROM INSURANCE IDENTIFICATION CARD, EXPIRATION DATE (IN ALL CASES), AND VIN.

Vehicle No. <u>05915750 (progressive)</u>	Vehicle No. <u>6631P715718</u>
Expiration Date <u>11/27/07</u>	Expiration Date <u>1/08/08</u>
VIN <u>1FTRF17W9YNB32842</u>	VIN <u>4T1SK12E9P4308803</u>

WITNESS (Attach separate sheet, if necessary)

Name	Address	Phone

DUPLICATE COPY REQUIRED FOR:

<input type="checkbox"/> Dept. of Motor Vehicles (if anyone is killed/injured)	<input type="checkbox"/> Motor Transport Division (P.D. vehicle involved)	<input type="checkbox"/> NYC Taxi & Limousine Comm. (if a Licensed taxi or limousine involved)	<input type="checkbox"/> Other City Agency (Specify)
<input type="checkbox"/> Office of Comptroller (if a City vehicle involved)	<input type="checkbox"/> Personnel Safety Unit (if a P.D. vehicle involved)	<input type="checkbox"/> Highway Unit	

NOTIFICATIONS: (Enter name, address, and relationship of friend or relative notified. If aided person is unidentified, list Missing Person Squad member who was notified. In either case, give date and time of notification.)

PROPERTY DAMAGED (other than vehicles)	OWNER OF PROPERTY (include city agency, where applicable)

IF NYPD VEHICLE IS INVOLVED:

Police Vehicle Operator's First Name		Last Name		Rank	Shield No.	Tax ID. No.	Command
Make of Vehicle	Year	Type of Vehicle	Plate No.	Dept. Vehicle No.		Assigned To What Command	
Equipment in Use At Time of Accident							
<input type="checkbox"/> Siren <input type="checkbox"/> Horn <input type="checkbox"/> Turret Light <input type="checkbox"/> 4-Way Flasher <input type="checkbox"/> High-Level Warning Lights <input type="checkbox"/> Traffic Cones <input type="checkbox"/> Headlights							

ACTIONS OF POLICE VEHICLE

<input type="checkbox"/> Responding to Code Signal	<input type="checkbox"/> Complying with Station House Directive
<input type="checkbox"/> Pursuing Violator	<input type="checkbox"/> Routine Patrol
<input type="checkbox"/> Other (Describe)	



Page of Pages

New York State Department of Motor Vehicles

## POLICE ACCIDENT REPORT (NYVCR)

1049

Amended report

Accident Date Month: 11, Day: 19, Year: 07			Day of Week Mon		Military Time 1533		No. of Vehicles 2		No. Injured 1		No. Killed 0		Not Investigated at Scene <input type="checkbox"/>		Left Scene <input type="checkbox"/>		Police Photos <input type="checkbox"/> Yes <input type="checkbox"/> No																																														
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Date of Birth Month: 06, Day: 14, Year: 86		Sex m		Unlicensed <input type="checkbox"/>		No. of Occupants 2		Public Property Damaged <input type="checkbox"/>		Date of Birth Month: 05, Day: 07, Year: 70		Sex m		Unlicensed <input type="checkbox"/>		No. of Occupants 2		Public Property Damaged <input type="checkbox"/>																																													
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City or Town McMurray							State PA		Zip Code 15317		City or Town Bronx							State NY		Zip Code 10468																																											
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 Signature: [Signature]  
 Name: [Name]  
 Title: [Title]

Tax ID No

NCIC No

Prepaid

Post Sec

Reviewing

Officer

93922

03030

042



Last Name				First				M.I.			
Address				Address				Address			
Date of Birth		Telephone (Area Code)		Date of Birth		Telephone (Area Code)		Date of Birth		Telephone (Area Code)	
Month	Day	Year	( )	Month	Day	Year	( )	Month	Day	Year	( )
Last Name				First				M.I.			
Address				Address				Address			
Date of Birth		Telephone (Area Code)		Date of Birth		Telephone (Area Code)		Date of Birth		Telephone (Area Code)	
Month	Day	Year	( )	Month	Day	Year	( )	Month	Day	Year	( )
Last Name				First				M.I.			
Address				Address				Address			
Date of Birth				Telephone (Area Code)				Shield No.			
Month	Day	Year	( )	Month	Day	Year	( )				

ENTER INSURANCE POLICY NUMBER FROM INSURANCE IDENTIFICATION CARD, EXPIRATION DATE (IN ALL CASES), AND VIN.

Vehicle No. 1 <u>05915750 (progressive)</u>	Vehicle No. 2 <u>66318715718</u>
Expiration Date <u>1/27/07</u>	Expiration Date <u>1/8/08</u>
VIN <u>1FTRF17W9TNB32842</u>	VIN <u>4T1SK12E9PU308803</u>

**WITNESS (Attach separate sheet, if necessary)**

Name	Address	Phone

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\_\_\_\_\_

\_\_\_\_\_

<b>PROPERTY DAMAGED (other than vehicles)</b>	<b>OWNER OF PROPERTY (include city agency, where applicable)</b>

**IF NYPD VEHICLE IS INVOLVED:**

Police Vehicle—Operator's First Name	Last Name	Rank	Shield No.	Tax ID. No.	Command
Make of Vehicle	Year	Type of Vehicle	Plate No.	Dept. Vehicle No.	Assigned To What Command
Equipment in Use At Time of Accident					
<input type="checkbox"/> Siren	<input type="checkbox"/> Horn	<input type="checkbox"/> Turret Light	<input type="checkbox"/> 4-Way Flasher	<input type="checkbox"/> High-Level Warning Lights	<input type="checkbox"/> Traffic Cones
<input type="checkbox"/> Headlights					

**ACTIONS OF POLICE VEHICLE**

☐ Responding to Code Signal \_\_\_\_\_

☐ Complying with Station House Directive \_\_\_\_\_

☐ Other (Describe) \_\_\_\_\_

Exhibit “B”

**PENNSYLVANIA  
Department of State****Corporations**[Online Services](#) | [Corporations](#) | [Forms](#) | [Contact Corporations](#) | [Business Services](#)

[Search](#)  
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[By Business Entity ID](#)  
[Verify](#)  
[Verify Certification](#)  
[Online Orders](#)  
[Register for Online](#)  
[Orders](#)  
[Order Good Standing](#)  
[Order Certified Documents](#)  
[Order Business List](#)  
[My Images](#)  
[Search for Images](#)

**Business Entity****Filing History****Date:** 8/26/2008

(Select the link above to  
view the Business Entity's  
Filing History)

**Business Name History**

<b>Name</b>	<b>Name Type</b>
BAKER INSTALLATIONS, INC.	Current Name

**Business Corporation - Domestic - Information**

<b>Entity Number:</b>	1604847
<b>Status:</b>	Active
<b>Entity Creation Date:</b>	9/13/1990
<b>State of Business.:</b>	PA
<b>Registered Office Address:</b>	4121 WASHINGTON RD MCMURRAY PA 15317-0
<b>Mailing Address:</b>	No Address

**Officers**

<b>Name:</b>	<b>FREDERICK P BAKER</b>
<b>Title:</b>	<b>President</b>
<b>Address:</b>	4121 WASHINGTON RD MCMURRAY PA 15317-63

<b>Name:</b>	<b>MARIANNE MCCLAIN</b>
<b>Title:</b>	<b>Secretary</b>
<b>Address:</b>	4121 WASHINGTON RD MCMURRAY PA 15317-63

<b>Name:</b>	<b>BETH BAKER</b>
<b>Title:</b>	<b>Treasurer</b>
<b>Address:</b>	4121 WASHINGTON RD MCMURRAY PA 15317-63

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Commonwealth of PA Privacy Statement



STATE OF NEW YORK     )  
                                  )SS.:  
COUNTY OF WESTCHESTER)

CARLA MANZO, being duly sworn says:

I am not a party to the action, am over 18 years of age and reside at Westchester County, New York. On August 27, 2008, I served a true copy of a Affirmation and Opposition, by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York addressed to the last known address of the addressee as indicated below:

LAW OFFICES OF EPSTEIN & RAYHILL  
Attorneys for Third-Party Defendant  
565 Taxter Road - Suite 275  
Elmsford, NY 10523  
(914) 347-6360  
File No. 08EL00124

MITCHEL E. WEISS, ESQ.  
Attorney for Plaintiff  
150 Broadway - Suite 1307  
New York, NY 10038  
(212) 571-7171

  
\_\_\_\_\_  
CARLA MANZO

SWORN to before me this  
27<sup>th</sup> day of August, 2008

  
\_\_\_\_\_  
NOTARY

JASON M. BERNHEIMER  
Notary Public, State of New York  
No. 02BE6019121  
Qualified in Westchester County  
Commission Expires February 1, 2011